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No. 1064

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1946

THE FEDERAL CROP INSURANCE CORPORATION
PETITIONER

v.

A. A. MERRILL AND N. D. MERRILL, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MERRILL BROS.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IDAHO.

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STATEMENT

Respondents present herewith their brief in opposition to the petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Idaho

entered in the above-entitled cause on November 26, 1946 (R. 140-144), and respectively pray that said petition be denied for the reasons hereinafter asserted.

There does not appear to be "a supporting" brief filed with the petition for the writ as authorized by Rule 38 of this Court, but said petition contains argument and a citation of authorities apparently intended as a suporting brief. The argument in the petition is largely upon the alleged merits of the cause and not confined to the question of whether or not a writ should be issued. Respondents, however, urge that said petition is without sufficient merit to justify the issuance of such a writ and that the question presented by the petitioner, when considered with the facts of the case, must be resolved in favor of the decision of the Idaho Court.

The petitioner presents the following question:

> "Were respondents entitled to recover on a Federal crop insurance policy, which incorporated by reference duly promulgated insurance regulations expressly excluding the bulk of respondents' crop from coverage and barring waivers of non-coverage by petitioner's county committees, on the ground that petitioner was 'equitably estopped' from denying liability in the same way that a private insurance company would have been, since respondents lacked actual knowledge of the applicable regulations and the county committee had been informed of the nature of the crop?" (Pet. pp. 3 and 4).

Additional matters are necessarily involved in determining this question and it seems advisable in order

to adequately present respondents' position to make a statement of the underlying facts of the case as presented to the State Court.

The reference made herein, such as (R. 4), are to the pages of the Transcript of the Record. Plaintiff's exhibits "A" to "E", herein referred to are those attached to the Amended Complaint and appears on pages 111 to 121 of the Record. Plaintiff's Exhibits "F" to "O" introduced in evidence (R.31-46) and Defendant's Exhibits 1 to 3, also introduced (R. 57, 60, 85) have not been included in the Transcript of the Record except such parts as were read at the trial.

STATEMENT OF THE CASE

The Federal Crop Insurance Corporation has been organized under an Act of Congress referred to in the petition for the writ. Fundamentally the objective of said Corporation is to write crop insurance. Congress has expressly provided, by amendment of December 23, 1944, C. 214, being Section 1508, Title 7, U.S.C.A. that "in the event that any claim for indemnity under the provisions of this chapter is denied by the corporation, an action on such claim may be brought against said corporation in the United States District Court or in any court of record of the state having general jurisdiction sitting in the district or county in which the insured farm is located, and jurisdiction is hereby conferred upon such district courts to determine such a controversy without regard to the amount in controversy * * *." provided

the suit be instituted within one year after the date the notice of the denial of the claim is received by the claimant. Obviously it was contemplated in the enactment of this legislation that controversies would arise and the courts would have the power to adjudicate them..

The underlying facts in so far as they affect the question herein presented are substantially as follows:

On March 26, 1945, at Idaho Falls, Idaho, at the solicitation of an agent of said Corporation, respondents made application in writing for crop insurance covering their 1945 spring wheat crop and other crops against loss by drouth, fire, hail, etc. (R. 4, 8). Prior to and at the time the application was signed respondents fully informed the corporation, through its agent, the Bonneville County Agricultural Conservation Committee, that they were planting 460 acres of early Bart spring wheat, 400 acres of which they were planting on land that had been seeded to early Bart spring wheat in 1944 and had winter-killed, and 60 acres on summer fallowed land (R.10).

Respondents were advised by the agents of said Corporation that all of said spring wheat crop was eligible for insurance for the year 1945 and that the Corporation would insure their spring wheat crop. The Bonneville County Agricultural Conservation Committee, agent of the Corporation, on March 26, 1945, recommended the acceptance of the application (R. 10).

On May 28, 1945, the Corporation duly accepted respondents' application for insurance and issued its pol-

icy and delivered a copy of the same to respondents, together with a letter of acceptance and instructions for respondents' convenience (R. 12, 13, Ex. "A," "A1," respondents' convenience (R. 12, 13, 111-116, Ex. "A," "A1," "B.")

At the time the policy was mailed to respondents no other instructions or rules were transmitted and no "Wheat Crop Insurance Regulations" upon which the corporation relied as a defense were mailed to respondents, who knew nothing about any such regulations (R. 13, 14).

Respondents planted 460 acres of spring wheat during the months of March and April 1945. The crop made normal growth until the middle of July 1945, but thereafter the entire crop, except 1254 bushels, was lost because of drouth (R.14).

On August 7, 1945, respondents notified the corporation in writing of the loss pursuant to the letter of instructions mailed respondents at the time the policy was transmitted to them (R. 17, 18, Ex. C. 117).

On or about September 21, 1945, the Corporation, through its agents, John P. Mix and C. N. Scorsbey, made an inspection of said crop loss (R. 21-23, 82), and thereupon made out a written "Report of Inspection" and delivered a copy thereof to respondents and advised respondents that said loss would be promptly paid (R. 39, 87). There is no dispute as to the amount of loss sustained by the respondents. The premium on said

policy became payable, pursuant to the regulations, following the maturity of the contemplated crop, and shortly prior to November 8, 1945, the corporation submitted a statement to respondents requesting payment of said insurance premium for the year 1945 in the sum of $309.47. Said amount was paid November 8, 1945, and was accepted and thereafter retained by said corporation, (R. 40-42). Shortly following the corporation's receipt of respondents' premium it notified respandents that the loss would not be paid (R. 45). On January 18, 1946, respondents instituted suit, in the appropriate state court having jurisdiction of the cause, against the insurance corporation for the sum of $3,960.30, which was the loss for 3070 bushels of early Bart spring wheat. Answer was filed by the defendant and said cause tried before a jury on March 19, 1946, and a verdict was rendered by said jury in favor of the respondents for $3,960.30 and costs. Thereupon the clerk's judgment was duly filed, from which judgment the corporation appealed to the Supreme Court of the State of Idaho. The Supreme Court affirmed said judgment on November 26, 1946. See Merrill et al v. Federal Crop Insurance Corporation, (Ida.) 174 P. (2) 834.

The petitioner seemingly contends that refusal to pay said loss was justified by an alleged regulation made by the Directors of the Corporation on January 29, 1945, and thereafter published in the Federal Register.

which said regulation in so far as it pertains to the question in contraversy reads in part as follows:

"Sec. 414.37. MEANING OF TERMS.

* * * * * *

"V. 'Wheat crop' means all seeded spring and winter wheat, including voluntary wheat and other voluntary small grain and vetch growing with the seeded wheat crop and including small grains seeded with the growing wheat crop on acreage not released by the corporation. The term 'wheat crop' shall not include voluntary wheat not growing with the seeded crop, wheat seeded with a mixture of flax or other small grain or vetch, true type winter wheat seeded in the spring, winter wheat seeded in the 1945 crop year and spring wheat which has been reseeded on winter wheat acreage in the 1945 crop year."

The foregoing definition was not contained in the policy of insurance nor in the letter of instructions sent with the policy. Respondents knew nothing of such regulation. The agents of the Corporation who solicited the insurance apparently knew nothing of such regulation but did know the character of the planted crop. The entire transaction was carried through as if such regulation never existed and respondents were led to believe that said insurance would be without controversy.

It is to be observed that this regulation is not a legislative enactment but merely an expression of a rule by the Board of Directors of the Corporation, and subject to amendment at any time.

ARGUMENT

The petitioner urges that it is necessary for this Court to determine whether or not the theory of equitable estoppel can be invoked in this case by reason of the fact that it is a Federal agency. It asserts that to permit such would be applying this rule to the Federal Government. The petitioner's position is quite inaccurate. The true theory underlying the facts of this case is aptly stated by the Supreme Court of the State of Idaho in the decision which petitioner desires to have reviewed. In Merrill v. Federal Crop Insurance Corporation, 174 P. (2) 834, the Idaho Court reviews the facts and considers the legal principles which would ordinarily be applied thereto and on page 835 says:

> "These rules would fix the liability of the appellant if it were a private corporation. However, the appellant urges that it is a governmental agency; that the regulation in question has the force and effect of a law; that under the federal Register Act the respondents had constructive notice of its contents; and that the same was binding upon the respondents. The regulation in question is not a law. The appellant had authority to insure wheat crops for the years 1945, 1946 and 1947, but as a matter of policy determined not to insure in 1945 spring wheat planted on ground sown to fall wheat in 1944 and issued such regulation as a declaration of policy for the guidance of its officers and agents. We are not concerned with the effect of such regulation if the respondents had known of its existence, as it must be conceded that the respondents had no actual knowledge of it. Likewise, the ultimate question in this case is not one of con-

structive notice but of equitable estoppel. Under the facts in this case all of the elements of equitable estoppel are present. The appellant in effect contends that estoppel is not applicable to it as an agency of the government. This court in State v. Twin Falls, etc., Water Co., 30 Idaho 41, 166 P. 220, 230, spoke as follows:

'Generally the doctrine of equitable estoppel does not apply to the government. 16 Cyc. 780. There are, however, exceptions to this rule. See United States v. Stinson, (7 Cir.) 125 F. 907, 60 C. C. A. 615; United States v. Willamette Valley, etc. Road Co., C. C., 54 F. 807. In the Stinson case the court said: "When the government seeks its rights at the hands of a court, equity requires that the rights of others as well should be protected. Carr v. United States, 98 U. S. (432), 438, 25 L. Ed. 209 (211). The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable injuiry. The substantial consideration underlying the doctrine of estoppel apply to government as well as to individuals'."

See also Woodrull v. Trapnall, 10 How. 190, 51 U. S. 190, 13 L. Ed. 383.

Here we are not dealing directly with the government as such nor with a duly enacted law, but are dealing with a corporation created as an agency of the Department of Agriculture and with one of its regulations adopting a policy with respect to the conduct of its proprietary insurance business. The respondents purchased the insurance in question in good faith and thereafter suffered a loss. The appellant through its agent had knowledge of the material facts. It is

now estopped from denying the validity of the insurance contract."

This theory is supported by numerous cases.

In the case of Bayne v. United States, 195 F. 236, the Eighth Circuit of Appeals considered a matter where a supplemental contract for the construction for the United States of a bridge over a river contemplated that the contractor should furnish 191 piles over 33 feet in length for a specified compensation but the engineer-officer in charge determined it necessary to drive more piles than was contemplated in the contract and at a greater depth. In allowing judgment for the additional amount the court on page 241 says:

> "We are further of the opinion that as the piles were driven under the direction of the engineer-officer in charge of the work on the part of the United States, and he at no time objected to the driving of the same, that after the piles were driven the United States are estopped from claiming that the officer in charge did not deem it necessary to drive only those piles which were actually driven more than 33 feet."

This theory is aptly expressed by the 8th Circuit Court of Appeals in the case of Utah Power & Light Company vs. United States, 230 F. 328, on page 342, as follows:

> "Nevertheless, there can be no doubt that situations may be and are presented where both state and nation enter courts of equity as suitors under conditions which place them upon an equal footing, in this respect, with the private

> citizen; that where the relations existing are such as to convey actual knowledge of and acquiescence in asserted claims under conditions which would make the subsequent denial of such claims inequitable, the doctrine of equitable estoppel as distinguished from mere laches may be invoked even against the government."

Here again, we urge that it is not necessary to go this far because the assertion of equitable estoppel in this case is against a corporation organized by the Government with the initial subscription of stock so advanced but ultimately intended to be owned by the insurers and whose regulations, upon which the petitioner relies, are fixed by the board of directors and for the purpose of engaging in a strictly proprietary business of insurance and for no other purpose. It is not engaged in governmental affairs. As aptly stated by the Idaho Supreme Court, supra, "the regulation in question is not a law." Hence, the application of the doctrine of equitable estoppel does not interfere with governmental functions.

The theory for which respondents contend is further supported by the following cases:

> Branson v. Wirth, 84 U. S. 32; 21 L. Ed. 566;
>
> State of Iowa v. Carr, 191 F. 257;
> Walker v. United States, 139 F. 409.

Attention has heretofore been called to the fact that Congressional enactment provides that this Corporation may sue or be sued in either the state or Federal courts. This enactment gives suport to the theory that the Cor-

poration engaged in a proprietary business and not necessarily acting in governmental matters should be subject to the same legal principles as if it were a private corporation. In Walker v. United States, supra, on page 412 of Vol. 139 Federal Reporter, the Court says:

> "United States v. Arredondo, 6 Pet. 712, 8 L. Ed. 547, was a suit under an act by which the United States consented to be sued to determine whether certain lands in Florida were private property or passed to the Government by the cession from the King of Spain, the Supreme Court said:
>
> "'By consenting to be sued and submitting the decision to judicial action, they have considered it was a purely judicial question, which we are now bound to decide as between man and man on the same subject matter'."

So in this case it is provided by Congressional Enactment that the petitioner may be sued in the courts of any state where the cause of action arose and with the obvious intent that it may be subjected to the laws of such state where such laws do not definitely conflict with the Federal laws. There is no conflict in this case.

Petitioner on page 19 of its petition asserts that there is a conflict in principle if not in actual holding between the instant case and Felder v. Federal Crop Insurance Corporation, 146 F. 638. A careful consideration of this case does not indicate such conflict but rather, the reverse. In the last paragraph of the opinion, on page 640, the Court says:

"We might point out that this case involves no element of technical estoppel. No act of any officer prevented the timely filing of proof of loss, but on the contrary the period for filing such proof had already elapsed before even the commission of any of these acts."

In the instant case the decision is based upon the theory of estoppel. Very obviously the 4th Circuit Court of Appeals would have held differently if the insured had been misled or that agents of the Corporation had led him to believe that his course of conduct was in accordance with the rules.

In the case at bar the agents of the petitioner were advised before the policy was issued that the wheat had been planted on the type of land which the corporation now asserts was excluded from insurance. Knowing these facts, the agents urged the acceptance of the policy and secured its submission to the respondents; they then inspected the loss and prepared for the respondents' signature the Proof of Loss and advised respondents that the claim would be paid and thereafter the Corporation submitted statement for the premium on the policy and accepted and retained the payment therefor, with never an offer of refund, and raised no objections to the payment or to the policy until "pay-day" arrived. Had similar facts been presented in the Felder case, supra, undoubtedly a different decision would have been reached.

On pages 19 and 20 of the petition further argument is asserted that a decision adverse to the Corpora-

tion in this case may "necessitate drastic changes in the administration of the Federal Crop Insurance program." This, we respectfully urge, is no argument in support of an application for a writ of certiroari. It is an administrative rather than a judicial question. It may as well be argued that "drastic changes" in the administration of the Act would be highly desirable particularly in providing in the contract of insurance accurate information for the guidance of the insured.

It is further urged on page 19 of the petition that a short application form with a copy of the applicable regulations will probably have to give place to the cumbersome preparation and issuance of a lengthy policy similar to that used by private companies in other insurance fields. It is to be observed however that a "copy of the applicable regulations" was not submitted with the contract of insurance, and it is difficult to see why it would be better for the farmer in the field to have a short form of insurance policy containing merely reference to regulations which were published in the Federal Register to which he has little or no chance of access than to have pertinent regulations printed in his policy which is delivered to him. It is most respectfully submitted that such argument forms no basis for the issuance of a writ in this case.

Furthermore, on page 20, petitioner argues that the Secretary of Agriculture advises that the considerations urged by the petitioner are very important to the proper

performance of the functions for which his Department is responsible. There was no evidence submitted of this fact. On the contrary, the evidence is to the effect that this Corporation is governed and controlled by a board of directors, who prescribe the form and character of the insurance policies. In any event, it is submitted that such argument is not one of judicial concern.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

O. A. JOHANNESEN
Residence: Idaho Falls, Idaho

A. A. MERRILL
Residence: Idaho Falls, Idaho

A. L. MERRILL
Residence: Pocatello, Idaho
Attorneys for Respondents